

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

ANTJUAN PIERRE JACKSON,
Defendant-Appellant.

Supreme Court No. 156502

Court of Appeals No. 332307

Lower Court No. 2014-0230-FC

ANSWER OPPOSING DEFENDANT-APPELLANT'S
APPLICATION FOR LEAVE TO APPEAL

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NOW COME, the People of the State of Michigan, Plaintiff-Appellee herein, by and through Jeffrey S. Getting, Prosecuting Attorney in and for the County of Kalamazoo, State of Michigan, and by way of answer opposing Defendant-Appellant's Application for Leave to Appeal, state to this Honorable Court as follows:

1. On September 30, 2014, Defendant was pled guilty in the 9th Circuit Court for Kalamazoo County, in the State of Michigan, to the felony offense of Unarmed Robbery contrary to MCL 750.530 as a second habitual offender pursuant to MCL 769.10.
2. On October 30, 2014, Defendant was sentenced to 8 years to 22 years and 6 months in prison with credit for 251 days previously served in jail.
3. Defendant filed an application for leave to appeal in the Michigan Court of Appeals seeking resentencing for an alleged error in the scoring of Offense Variable 13 (hereinafter: OV 13). The Michigan Court of Appeals denied Defendant's request for relief and affirmed the sentence in a published opinion dated July 25, 2017. A copy of this opinion was attached to Defendant's instant application as Appendix A.
4. Defendant claims is that the Court of Appeals erred in finding that OV 13 was properly scored at 25 points instead of 0 points based in part on two convictions for attempted resisting and obstructing a police officer referenced in the Presentence Investigation Report . This claim is without merit. MCL 777.43 (1) (c) instructs the trial court to assign 25 points where "the offense was part of a pattern of felonious criminal

activity involving 3 or more crimes against a person.” MCL 777.43 (2)(a) instructs the court that “[f]or determining the appropriate points under this variable, *all crimes within a 5-year period*, including the sentencing offense, *shall* be counted regardless of whether the offense resulted in a conviction.” (emphasis added). Defendant asserts that because the offense of attempted resisting and obstructing a police officer is considered a “misdemeanor” it cannot be used by the trial court to score OV 13. This argument is without merit. MCL 777.19 (1) clearly indicates that the Michigan Sentencing Guidelines apply to attempts to commit an offense enumerated in this part (Part 2 of Chapter XVII of the Code of Criminal Procedure) “if the attempted violation is a felony.” An attempt falls within the same crime group as the offense attempted, MCL 777.19(2), the crime class is determined by the class of the offense attempted, MCL 777.19(3). Resisting and obstructing a police officer is a class G felony offense. MCL 750.81d(1); MCL 777.16d. Similarly, resisting and obstructing a police officer contrary to MCL 750.479(2) is a class G felony pursuant to MCL 777.16x. And according to MCL 777.19(3)(b), if the attempted offense is in class E, F, or G, the attempt itself is classified as a class H. The Court of Appeals, like the trial court, found a prior unpublished opinion of the Michigan Court of Appeals persuasive on this point.¹

9. Defendant has failed to establish that the Court of Appeals erred in affirming the sentence. Furthermore, the Court of Appeals’ decision to deny Defendant relief does not involve a legal principle of major significance to the state’s jurisprudence, does not conflict

¹ *People v. Donald Marcus Mosher*, unpublished per curiam opinion (Docket No. 312996, Rel’d 1/23/14), a copy of which was attached in Defendant’s instant application as Appendix C.

with other published appellate decisions, nor will it cause a material injustice if left undisturbed. As such, the instant application for leave to appeal does not present the required grounds for appeal required in MCR 7.305 (B).

WHEREFORE, the People of the State of Michigan, Plaintiff-Appellee herein, respectfully request that this Honorable Court deny Defendant's Application for Leave to Appeal.

Respectfully submitted,

Jeffrey S. Getting
Prosecuting Attorney

/s/ Mark A. Holsomback

Mark A. Holsomback P54713
Assistant Prosecuting Attorney

Dated: October 12, 2017